

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

[www.montgomerycountymd.gov/content/council/boa/board.asp](http://www.montgomerycountymd.gov/content/council/boa/board.asp)

**Case No. A-5896**

**PETITION OF STEPHEN KERN**

**RESOLUTION TO DENY REQUEST FOR RECONSIDERATION**

(Resolution Adopted October 1, 2003)

(Effective Date of Resolution: February 19, 2004)

The Board of Appeals has received a letter, dated September 2, 2003, from Ben Van Dusen, AIA, on behalf of the Petitioner. Mr. Van Dusen writes in reference to the Board's August 21, 2003 opinion in the captioned variance case. Mr. Van Dusen requests "clarification on the denied provision, which deals with the proposed extension of an existing non-conforming front porch." Our understanding of the opinion, based on comments by various members of the Board during the hearing...is slightly different from the wording of the decision."

The subject property is Lot P40 and P41, Block 24, B. F. Gilbert's Addition to Takoma Park Subdivision, located at 7003 Woodland Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone.

The Board of Appeals considered Mr. Van Dusen's letter at its Worksession on October 1, 2003. The Board finds that Mr. Van Dusen's letter is a request for Reconsideration of its August 21, 2003 opinion, specifically its decision to deny the requested variance of four (4) feet for the proposed covered porch, as it is within twelve (12) feet of the front lot line. Rule 10.1.2 of the Board of Appeals Rules of Procedure [Council Resolution No. 12-865, October 27, 1992], provides, pertaining to grounds for reconsideration of decisions on special exceptions:

The Board may grant reconsideration only on evidence of changed circumstances, new evidence that could not reasonably have been presented at the original hearing, or if some mistake or misrepresentation was made at the original hearing that requires rehearing and re-argument in order to be corrected.

The Board finds nothing in the request for Reconsideration which falls within the purview of Rule 10.1.2, and therefore reiterates its denial of the four-foot variance for the proposed covered front porch, and its finding "that applicant has provided insufficient evidence of any zoning reason to expand the covered front porch beyond the existing footprint," noting that this means the existing footprint for the porch.

Therefore, on a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Louise L. Mayer and Donald H. Spence, Jr., Chairman in agreement and Donna L. Barron necessarily absent:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the request for Reconsideration of the Board of Appeals opinion, dated August 21, 2003, in Case No. A-5896, Petition of Stephen Kern, is **denied**.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 19<sup>th</sup> day of February, 2004.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.



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**Case No. A-5896**

**PETITION OF STEPHEN KERN**  
(Hearing held July 16, 2003)

**OPINION OF THE BOARD**  
(Effective date of Opinion, August 21, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a), 59-C-1.323(b)(1), and 59-B-3.1(d). The existing single-family dwelling requires variances of five (5) feet as it is within twenty (20) feet of the front lot line and of three (3) feet as it is within four (4) feet of the side lot line.

The proposed construction of a second-story addition requires variances of five (5) feet as it is within twenty (20) feet of the front lot line and of three (3) feet as it is within four (4) feet of the side lot line. The proposed construction of a covered porch requires a variance of four (4) feet as it is within twelve (12) feet of the front lot line.

The required front lot line setback is twenty-five (25) feet and the required side lot line setback is seven (7) feet for the existing single-family dwelling and the proposed construction of a second-story addition. The required front lot line setback is sixteen (16) feet for the proposed construction of a covered porch.

Ben Van Dusen, an architect, appeared with the petitioner at the public hearing.

The subject property is Lot P40 and P41, Block 24, B. F. Gilbert's Addition to Takoma Park Subdivision, located at 7003 Woodland Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 03170883).

**Decision of the Board:** Requested variances for the existing single-family dwelling **granted**.

Requested variances for the second-story addition **granted**.  
Requested variance for the covered porch **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes to construct a second-story addition over the existing one-story single-family dwelling and expand the footprint of the existing covered porch.

2. The petitioner testified that the existing dwelling is currently located in the northern side yard setback and that the proposed construction of the second-story addition would not expand the footprint of the existing dwelling. The petitioner testified that the existing covered porch would be expanded to wrap around the front of the dwelling.
3. The petitioner testified that the view of the addition will be minimized for the neighboring and adjoining properties with the use of gable and shed-roofed dormers.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance for the covered porch must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the applicant has provided insufficient evidence of any zoning reason to expand the covered front porch beyond the existing footprint.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of four (4) feet from the required sixteen (16) foot front lot line setback for the construction of a covered porch is denied.

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances for the existing single-family dwelling and the second-story addition can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The existing single-family dwelling is currently located in the northern side yard setback. The proposed construction of a second-story addition will not expand the footprint of the existing dwelling. The Board finds that the pre-existing dwelling and the proposed construction within the existing footprint create an extraordinary situation peculiar to the petitioner's property and that the strict application of the zoning regulations would result in practical difficulties for the property owners were the variances to be denied.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the existing single-family dwelling and the proposed construction of a second-story addition are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the applicant has provided insufficient evidence of any zoning reason to expand the covered front porch beyond its existing footprint.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the gable and shed-roofed dormers will minimize the view for the neighboring property owners and that the proposed construction will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of five (5) feet from the required twenty-five (25) foot front lot line setback and of three (3) feet from the required seven (7) foot side lot line setback for the existing single-family dwelling; and of five (5) feet from the required twenty-five (25) foot front lot line setback and of three (3) feet from the required seven (7) foot side lot line setback for the construction of a second-story addition are granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variances.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 5(a) through 5(e).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution. On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of

Appeals  
I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 21st day of August, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

